

entered 9/26/12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

Plaintiff,

v.

ESTATE OF LILLIAN WIESNER, *et al.*,

Defendants.
-----x

Civil No. CV 05-1634

(Hurley, J.)

(Wall, M.J.)

02-2004-0023

CONSENT JUDGMENT



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I. BACKGROUND

A. The United States of America ("United States" or "Plaintiff"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Stanton Cleaners Area Groundwater Contamination Superfund Site in the Village of Great Neck Plaza, Town of North Hempstead, Nassau County, New York ("the Site").

B. The defendants that have entered into this Consent Judgment ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA has undertaken response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future.

D. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

E. The United States alleges that Settling Defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

F. Settling Defendants are defending a declaratory judgment action in the Insurance Coverage Action, defined below, brought by the Superintendent of Insurance of the State of New York, as Ancillary Receiver of The Home Insurance Company, defined below, which insured Settling Defendants with respect to the Site.

G. The parties to the Insurance Coverage Action, defined below, are resolving the claims brought in that action pursuant to a separate agreement and stipulation attached hereto as Appendix C and the resolution of that action provides for payment by the Superintendent to EPA of \$606,000 (hereinafter, "Insurance Proceeds") on behalf of Settling Defendants.

H. On June 13, 2003, The Home Insurance Company, defined below, was declared insolvent in the matter of *The Home Insurance Company, Merrimack County Superior Court, State of New Hampshire, 03-J-0106* (hereinafter, "Liquidation Action"). On June 10, 2004, the United States filed a proof of claim in the Liquidation Action with respect to the Site (hereinafter, "Proof of Claim").

I. On September 26, 2003, the Superintendent of Insurance of the State of New York, as Ancillary Receiver of The Home Insurance Company, as defined below, was appointed ancillary receiver in an action filed in the Supreme Court of the State of New York, New York

County ("New York Supreme Court") pursuant Article 74 of the New York State Insurance Law, *In the matter of the Application of Gregory V. Serlo, Superintendent of Insurance of the State of New York, for an Order of Appointment as Ancillary Receiver of The Home Insurance Company* ("Receivership Action"). To become effective, that portion of the settlement embodied in this Consent Judgment which pertains to the payment of Insurance Proceeds must be approved by the New York Supreme Court in the Receivership Action.

J. The United States has reviewed the Financial Information and Insurance Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, the United States has determined that Settling Defendants have limited financial ability to pay for response costs incurred and to be incurred at the Site.

K. The United States and Settling Defendants agree, and this Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Judgment is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Judgment and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Judgment or this Court's jurisdiction to enter and enforce this Consent Judgment.

III. PARTIES BOUND

2. This Consent Judgment is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Judgment.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Judgment, terms used in this Consent Judgment that are defined in CERCLA or in regulations promulgated under CERCLA

shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Judgment, or in any appendix attached hereto, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Consent Judgment" shall mean this Consent Judgment and all appendices attached hereto. In the event of conflict between this Consent Judgment and any appendix, this Consent Judgment shall control.

The term "day" shall mean a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

"Effective Date" shall be the date upon which this Consent Judgment is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Judgment, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Financial Information" shall mean those financial documents identified in Appendix A.

"Hazardous Substance" shall mean: (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9604 (14); and (2) any contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9604 (33).

"Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (1) limit land, water, and/or resource use to minimize the potential for human exposure to hazardous substances at the Site; (2) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of, the response action; and/or (3) provide information intended to modify or guide human behavior at the Site.

"Insurance Coverage Action" shall mean the insurance coverage declaratory judgment action filed by Howard Mills, Acting Superintendent of Insurance of the State of New York as Ancillary Receiver of The Home Insurance Company against the Estate of Lillian Wiesner ("Wiesner Estate"), John P. Maffei ("John Maffei"), and Executeam Corp. in the Supreme Court of the State of New York, County of Nassau, Index No. 06/006933, and arising out of the Plaintiff's claims against Wiesner Estate, John Maffei, and Executeam Corp. regarding the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on

October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Master Leases" shall mean the two long-term leases currently held by John Maffei originally entered into by James Wiesner and Executeam Corp. regarding the Property and any assignments of those two leases, *i.e.*, (a) Master Lease that covers the westerly 55 feet of the Property, including buildings containing the dry cleaning operations ("West Lease"), which was recorded in the Nassau County Clerk's Office at Liber 7624, beginning at page 38, and which James Wiesner entered into the West Lease with Executeam Corp. by agreement dated November 26, 1966, and which covered the 51-year period from January 1, 1967 to December 31, 2017; and (b) Master Lease that covers the easterly 55 feet of the Property ("East Lease"), which was recorded in the Nassau County Clerk's Office at Liber 7655, beginning at page 449, and was entered into by the same parties on April 7, 1967 for the approximately 51-year period from May 15, 1967 to December 31, 2017. Both Master Leases were signed by John Maffei on behalf of Executeam Corp. On September 30, 1987, Executeam Corp. assigned the Master Leases to John Maffei.

"New York Security Fund" shall mean the New York State Property/Casualty Insurance Security Fund, which is administered by the Superintendent, defined below. The Superintendent, and his agents, including the New York State Department of Financial Services - New York Liquidation Bureau ("NYLB"), utilize the New York Security Fund to discharge the Superintendent's statutorily defined duties to protect the interests of the policyholders and creditors of insurance companies that have been declared impaired or insolvent, such as The Home.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United State and the Settling Defendants.

"Plaintiff" shall mean the United States.

"Property" shall mean the real property owned by Wiesner Estate, located at 110 Cutter Mill Road, Village of Great Neck Plaza, Town of North Hempstead, Nassau County, New York, and shown on the Nassau County Land and Tax Map as Section 2, Block 376, Lot 8. The Property was previously designated as Section 2, Block S, Lot 74 as described in a deed dated November 2, 1967, which was recorded in the Nassau County Clerk's Office at Liber 7760, page 418. The Property was previously owned by James Wiesner, who transferred ownership of the Property to his wife, Lillian Wiesner, on November 2, 1967. The transfer was recorded in the Nassau County Clerk's Office at Liber 7760, beginning at page 418. Lillian Wiesner died in March 2001. The Executor of the Wiesner Estate is Jason Feinstein, Esq.

"Proprietary Controls" shall mean easements or covenants running with the land that (1) limit land, water or resource use and/or provide access rights and (2) are created pursuant to

common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

"Settling Defendants" shall mean the Estate of Lillian Wiesner and John P. Maffei, including John P. Maffei as signatory for Executeam Corp.

"Site" shall mean the Stanton Cleaners Area Groundwater Contamination Superfund Site, which includes the Property and any areas to which hazardous substances that have been released at the Property have migrated.

"State" shall mean the State of New York.

"Superintendent" shall mean the Superintendent of Insurance of the State of New York, as Ancillary Receiver of The Home Insurance Company, which has been renamed the Superintendent of Financial Services of the State of New York.

"The Home" shall mean The Home Insurance Company.

"Transfer" shall mean to sell, convey, or exchange, or where used as a noun, a sale, conveyance, or other disposition of the Property. Transfer does not include inheritance or bequest.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean: (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Wiesner Estate" shall mean Settling Defendant the Estate of Lillian Wiesner.

V. PAYMENT OF RESPONSE COSTS AND TRANSFER OF PROPERTY INTERESTS

4. Payments by Settling Defendants John P. Maffei and John P. Maffei on behalf of Executeam Corp.

a. John Maffei and John P. Maffei on behalf of Executeam Corp. hereby terminate all rights, title and interests in the Master Leases at the time of Transfer and transfer and release all such rights, title and interests thereto to Wiesner Estate, including, but not limited to, all rights, title and interests in any sublease agreements entered into with any subtenants leasing any portion of the Property, Wiesner Estate hereby accepts such termination and transfer.

b. John Maffei shall pay to the EPA Hazardous Substances Superfund the principal amount of \$150,000. Payment of the principal amount shall be made in two installments. The first installment payment of \$100,000 is due within 30 days after the Effective Date. The subsequent installment payment of \$50,000 is due within 360 days after the Effective

Date and shall include an additional sum for Interest accrued on the unpaid portion of the principal amount calculated from the Effective Date until the date of the payment. The United States Attorney's Office ("USAO") for the Eastern District of New York ("EDNY") shall send a calculation of the Interest due for the second payment to John Maffei. John Maffei may pay any installment payment prior to the due date, but must contact the USAO in advance for a determination regarding the amount of Interest to be included with the payment. In the event the first installment payment includes an overpayment, the amount of the overpayment shall be applied to the remaining principal.

c. Maintenance of the Property. Until the Property is sold, Maffei and/or Wiesner Estate shall, at its own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property and any other obligations relating to maintenance of the Property.

5. Sale of Property to Sabet Development Co., Inc. and Payment by Wiesner Estate of Net Sale Proceeds.

a. In the event that: (1) Wiesner Estate enters into a contract to sell the Property to The Sabet Development Company, Incorporated ("Sabet") within 60 days after the Effective Date; (2) the contract satisfies the conditions set forth in Paragraph 5.f.; (3) the sales price is for at least \$2,200,000; and (4) Wiesner Estate sells the Property to Sabet, then, Wiesner Estate shall pay the United States 92% of the net sales proceeds from the Transfer of the Property. "Net sales proceeds" shall mean, for purposes of this Paragraph, all consideration received by Wiesner Estate from the sale of the Property, less the following closing costs associated with the completion of the Transfer, to the extent such costs are actually paid by Wiesner Estate: (i) any recording fees; (ii) any state and/or municipal transfer taxes regarding the sale; and (iii) Wiesner Estate's reasonable attorney fees relating solely to the Transfer of Property to Sabet. Wiesner Estate shall not close or settle the Estate of Lillian Wiesner prior to the Transfer.

b. The payment required by Paragraph 5.a., shall be made at the time of Transfer by official bank check made payable to EPA Hazardous Substance Superfund. Provided that the amount of "net sales proceeds" is acceptable, EPA shall arrange for the execution or delivery, at the time of the sale, of a release of any federal CERCLA lien imposed on the Property. Wiesner Estate shall present the check to an authorized representative of EPA who will be present at the time of the Transfer. At the time of transfer, EPA shall arrange for the execution or delivery of a release of any federal CERCLA lien imposed on the Property. In the event Wiesner Estate transfers the Property to Sabet, Wiesner Estate shall not be required to comply with Paragraph 8.

c. Wiesner Estate shall submit to EPA, at least ten days prior to the date of the sale of the Property, a notice of the sale, Wiesner Estate's calculation of the net sales

proceeds, and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts of closing costs to be paid; (iii) documentation of the amounts of state and/or municipal transfer taxes to be paid regarding the sale of the Property; and (iv) documentation of Wiesner Estate's reasonable attorney fees relating solely to the Transfer of Property to Sabet. Wiesner Estate shall obtain EPA's approval of the calculation of net sales proceeds prior to the sale and EPA will endeavor to expeditiously provide such approval.

d. Wiesner Estate shall provide EPA with a copy of the proposed contract for sale of the Property to Sabet and otherwise comply with Paragraphs 5.f. and 26 of this Consent Judgment. Wiesner Estate shall provide to EPA a copy of the fully executed contract within five days after signing the contract.

e. Maintenance of the Property. Until the Property is sold, Wiesner Estate and/or Maffei shall, at its own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property and any other obligations relating to maintenance of the Property.

f. Wiesner Estate agrees that it shall not accept an offer for the sale of the Property or execute a contract for the sale of the Property to Sabet without prior notice to, and approval by, the United States of the terms of any proposed sale and EPA will endeavor to expeditiously provide such approval. The contract for sale of the Property to Sabet shall require Sabet to grant access to the United States and the State as well as their representatives, including EPA and its contractors, agents, and representatives, and parties designated by EPA, for the purpose of conducting any response activity related to the Property. The contract also shall require Sabet to grant to the United States and the State as well as their representatives the right to enforce any Institutional Controls that EPA determines necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures performed or to be performed at the Site. The contract of sale shall also include a designation that EPA and the State of New York are third-party beneficiaries as follows: "Wiesner Estate and Sabet hereby agree that EPA and the State of New York, shall be, on behalf of the public, third-party beneficiaries of the benefits, rights and obligations conveyed to Sabet; provided that nothing in the contract of sale shall be construed to create any obligations on the part of EPA and the State of New York." If the United States approves the terms of the proposed sale, Wiesner Estate agrees to sell the Property to Sabet if Sabet agrees to such terms. The contract for sale of the Property shall require that the following deed restrictions be placed in the deed upon Transfer: (i) prohibit interference with or disturbance of the soil vapor extraction system ("SVE") system installed to remove soil contaminated with volatile organic compounds ("VOCs") at the Property; (ii) prohibit interference with or disturbance of the groundwater pump and treat system, including the treatment building, wells, and associated piping and electrical equipment installed

to remediate groundwater VOC contamination at the Site; (iii) prohibit installation of any groundwater wells for residential, commercial, or industrial use at the Property; and (iv) permit access to the Property to the same extent as the requirements of Paragraph 29 of this Consent Judgment. Pursuant to Paragraph 29 the deed restrictions shall include a designation that EPA is a third-party beneficiary or "Agency" allowing EPA to maintain the right to enforce the deed restrictions without acquiring an interest in real property. The contract of sale of the Property shall provide that the deed restrictions and access rights must survive the Transfer of the Property.

g. Wiesner Estate shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XII of this Consent Judgment, for the new owner to provide access and/or Institutional Controls regarding the Property or portion thereof that was sold.

6. Payment of Net Proceeds of Sale of Property to Purchaser Other Than Sabet.

a. Appraisal of Property. Within 30 days after receipt of a written request from EPA, Wiesner Estate shall submit to EPA the names of one or more appraisers. The appraisers identified shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. EPA may, within 30 days thereafter, disapprove the proposed appraiser(s). If all proposed appraisers are disapproved by EPA, Wiesner Estate shall, within 15 days of such disapproval, submit names of additional appraisers, which shall be subject to EPA's disapproval as provided above. Any appraiser(s) not disapproved by EPA shall be deemed to be approved. Wiesner Estate shall, within 60 days of the deadline for EPA's disapproval of the proposed appraiser(s), obtain an appraisal of the Property. The appraisal shall be performed by any appraiser deemed to be approved. Wiesner Estate shall be responsible for all appraisal fees. Wiesner Estate shall submit a copy of the appraisal to EPA. If the Property is not sold within one year of the date of the appraisal, and if EPA so requests, Wiesner Estate shall obtain a new appraisal of the Property, in accordance with this Paragraph.

b. Maintenance of the Property. Until the Property is sold, Wiesner Estate and/or Maffei shall, at its own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property and any other obligations relating to maintenance of the Property.

c. Marketing of the Property. Within 30 days after the date of the appraisal, Wiesner Estate shall commence using best efforts to sell the Property. "Best efforts" for purposes of this Paragraph includes: (i) entering into a listing agreement, for the purpose of marketing and selling the property, with a real estate broker, dealer, or agent licensed in the State who customarily deals with real property similar to the Property; (ii) advertising the Property for sale in appropriate publications; (iii) listing the Property with appropriate real estate listing services; (iv) maintaining the Property in a condition suitable for showing to prospective buyers;

and (v) providing access to the Property, at reasonable times, to real estate brokers, dealers or agents and prospective buyers. Wiesner Estate shall submit to EPA reports regarding its efforts to market the Property. The first such report shall be due three months after commencement of efforts to sell the Property, and successive reports shall be due quarterly thereafter.

d. Wiesner Estate agrees that it shall not accept an offer for the sale of the Property or execute a contract for the sale of the Property without prior notice to, and approval by, the United States of the terms of any proposed sale. Any contract for sale of the Property shall require the purchaser to grant access to the United States and the State as well as their representatives, including EPA and its contractors, agents, and representatives, and parties designated by EPA, for the purpose of conducting any response activity related to the Site. The contract also shall require the purchaser to grant to the United States and the State as well as their representatives the right to enforce any Institutional Controls that EPA determines necessary to implement, ensure non-interference with, or ensure the protectiveness of the removal or remedial measures performed or to be performed at the Site. The contract of sale shall also include a designation that EPA and the State of New York are third-party beneficiaries as follows:

"Wiesner Estate and purchaser hereby agree that EPA and the State of New York, shall be, on behalf of the public, third-party beneficiaries of the benefits, rights and obligations conveyed to purchaser; provided that nothing in the contract of sale shall be construed to create any obligations on the part of EPA and the State of New York." If the United States approves the terms of any proposed sale, Wiesner Estate agrees to sell the Property to a purchaser if the purchaser agrees to such terms. The contract for sale of the Property shall require the following deed restrictions to be placed in the deed upon Transfer: (i) prohibit interference with or disturbance of the SVE system installed to remove soil contaminated with VOCs at the Property; (ii) prohibit interference with or disturbance of the groundwater pump and treat system, including the treatment building, wells, and associated piping and electrical equipment installed to remediate groundwater VOC contamination at the Site; (iii) prohibit installation of any groundwater wells at the Property; and (iv) permit access to the Property to the same extent as the requirements of Paragraph 29 of this Consent Judgment. The contract of sale of the Property shall provide that deed restrictions and access rights must survive the Transfer of the Property.

e. Wiesner Estate agrees that it will not hold a mortgage from the purchaser of the Property. If Wiesner Estate identifies a prospective purchaser for the Property and EPA determines that such prospective purchaser will not adversely impact any ongoing or planned response action at the Site, Wiesner Estate shall proceed with the sale of the Property to the prospective purchaser upon EPA's written approval.

f. If the proposed contract for the sale of the Property provides for Wiesner Estate to receive all cash, is for at least 150% of the appraised value of the Property based on the appraisal required by this Consent Judgment, and provides for the Property sale to occur within 60 days after the date of execution of the sales contract, then Wiesner Estate may execute the

contract without EPA's prior written approval. Otherwise, Wiesner Estate shall provide to EPA a copy of the proposed Property sales contract, and must obtain EPA's written approval before executing the contract. Wiesner Estate shall provide to EPA a copy of any offer to purchase the Property within 48 hours after receipt of such offer, and shall obtain written or electronic acknowledgment of EPA's receipt of such copy, in order to give EPA an opportunity to review and object to the offer. If EPA does not object to the offer within ten business days after receipt of a copy of the offer, then Wiesner Estate may execute the contract for sale of the Property. Wiesner Estate shall provide to EPA a copy of the fully executed contract within five days after signing the contract.

g. Wiesner Estate shall submit to EPA, at least ten days prior to the date of the sale of the Property, a notice of the sale, Wiesner Estate's calculation of the net sales proceeds, and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts of closing costs to be paid; (iii) documentation of any broker's fees regarding the sale; (iv) documentation regarding any reasonable appraisal costs concerning the sale; (v) documentation of the amounts of state and/or municipal transfer taxes to be paid regarding the sale of the Property; and (vi) documentation of Wiesner Estate's reasonable attorney fees relating solely to the Transfer of Property. Wiesner Estate may request that EPA approve the calculation of net sales proceeds prior to the sale. In that event, EPA's approval shall be binding in any subsequent dispute between the United States and Wiesner Estate regarding whether Wiesner Estate has complied with Paragraph 6.d. If within three years after commencement of efforts to market the Property, Wiesner Estate has not executed a contract for the sale of the Property, upon receipt of notice from EPA, Wiesner Estate shall commence best efforts to sell the Property to the highest bidder at a public auction pursuant to terms approved in advance by EPA including a minimum acceptable bid. For purposes of this Paragraph, best efforts shall mean advertizing the auction in at least two local newspapers for at least 30 days prior to the auction, and engaging the services of a professional auctioneer.

h. At the time of the sale, Wiesner Estate shall pay to the EPA Hazardous Substances Superfund 92% of the net sales proceeds from the Transfer of the Property. "Net sales proceeds" shall mean, for purposes of this Paragraph, all consideration received by Wiesner Estate from the sale of the Property, less the following closing costs: (i) any reasonable real estate agent commission regarding the sale (not to exceed 6%); (ii) any reasonable appraisal costs concerning the sale; (iii) any recording fees, (iv) any state and/or municipal transfer taxes regarding the sale; and (v) Wiesner Estate's reasonable attorney fees relating solely to the Transfer of the Property. Wiesner Estate shall not close or settle the Estate of Lillian Wiesner prior to the Transfer.

i. The payment required by Paragraph 6.h. shall be made by official bank check made payable to EPA Hazardous Substance Superfund. Wiesner Estate shall present the

check to an authorized representative of EPA who will be present at the time of the Transfer. At the time of Transfer, EPA shall arrange for the execution or delivery of a release of any federal CERCLA lien imposed on the Property. In the event Wiesner Estate transfers the Property to the purchaser, Wiesner Estate shall not be required to comply with Paragraph 8.

j. Wiesner Estate shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XII of this Consent Judgment, for the new owner to provide access and/or Institutional Controls regarding the Property or portion thereof that was sold.

7. Payment of Insurance Proceeds by Superintendent. Within 60 days of receipt by the Superintendent or the New York State Department of Financial Services – New York Liquidation Bureau of a duly entered order of approval by the New York Supreme Court in the Receivership Action of that portion of the settlement embodied in this Consent Judgment which pertains to the payment of Insurance Proceeds, the Superintendent shall pay \$606,000 in Insurance Proceeds to the EPA Hazardous Substance Superfund pursuant to the payment instructions identified in Paragraph 11.c. in connection with the settlement between the Superintendent and Settling Defendants embodied in Appendix C. Upon receipt of this payment EPA will withdraw its Proof of Claim against The Home in the Liquidation Action and will not file another or further Proofs of Claim in the Liquidation Action related to the Property.

8. All payments by Settling Defendants under Paragraphs 4, 5 and 6 shall be made at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the USAO for the EDNY after the Effective Date. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Judgment. The FLU shall provide the payment instructions to the following on behalf of Settling Defendants:

As to Wiesner Estate:

Joseph T. Gibbons, Esq.
DeCicco, Gibbons & McNamara, P.C.
14 East 38th Street
New York, NY 10016

and

Jason Feinstein, Executor
Estate of Lillian Wiesner
Sterns & Weinroth
50 West State Street
Suite 1400
P.O. Box 1298
Trenton, New Jersey 08607-1298

As to John P. Maffei:

Michael J. Carro, Esq.
London Fischer LLP
59 Maiden Lane
New York, New York 10038

and

John P. Maffei
85-26 Edgerton Blvd.
Jamaica Estates, New York 11432

Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XIV (Notices and Submissions). At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall reference the CDCS Number, Site/Spill ID Number 02-LH, and DOJ case number 90-11-3-08416.

9. Settling Defendant Wiesner Estate shall neither attempt to, nor actually sell, assign, convey, exchange, bequeath or otherwise encumber the Property in any way except by means of a Transfer, as defined herein and Settling Defendant Maffei shall cooperate in all efforts to Transfer the Property.

VI. FAILURE TO COMPLY WITH CONSENT JUDGMENT

10. Interest on Payments and Accelerated Payments. If any Settling Defendant fails to make any payment required by Paragraphs 4, 5, or 6 or Paragraph 11 ("Stipulated Penalties") by the required due date, all remaining installment payments, if any, and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

11. Stipulated Penalties.

a. If any amounts due under Paragraphs 4, 5, or 6 are not paid by the required date, the Settling Defendant responsible for the payment shall be in violation of this Consent Judgment and shall pay, as a stipulated penalty, in addition to any Interest required, \$2,000 per violation per day that such payment is late.

b. If Wiesner Estate fails to use best efforts to sell the Property in accordance with Paragraph 6, Wiesner Estate shall be in violation of this Consent Judgment and shall pay, as a stipulated penalty, \$ 2,000 per day for each day of failure to use best efforts to sell the Property. Paragraph 6.f. requires the submission of reports by the Wiesner Estate to EPA to verify the use of best efforts to market the Property.

c. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer ("EFT"). Settling Defendants shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- i. Amount of payment
- ii. Bank: **Federal Reserve Bank of New York**
- iii. Account code for Federal Reserve Bank of New York account receiving the payment: **68010727**
- iv. Federal Reserve Bank of New York ABA Routing Number: **021030004**
- v. SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- vi. Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- vii. Name of Settling Defendant(s):
- viii. Case number: **CV 05-1634**
- vix. Site/Spill identifier: **02LH**

and shall reference the CDCS Number, the Site/Spill ID Number, and DOJ Case Number. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall reference the CDCS Number, the Site/Spill ID Number, and the DOJ Case Number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Judgment shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Judgment.

12. If the United States brings an action to enforce this Consent Judgment, the Settling Defendants responsible for the violation shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Judgment.

13. Notwithstanding any other provision of this Section, the United States may, in its

unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Judgment. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Judgment.

VII. COVENANTS NOT TO SUE BY UNITED STATES

14. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site. With respect to present and future liability of John Maffei, the covenants shall take effect upon receipt by EPA of the last payment by John Maffei required by Paragraph 4 (Payment of Response Costs). With respect to present and future liability of Wiesner Estate, the covenants shall take effect upon receipt by EPA of the last payment by Wiesner Estate required by Paragraphs 5 or 6 (Payment of Response Costs). These covenants not to sue for each Settling Defendant are conditioned upon the satisfactory performance by that Settling Defendant of their obligations under this Consent Judgment, including but not limited to, payment of all amounts due by the respective Parties under Paragraphs 4, 5, 6 or 7 (Payment of Response Costs), and any interest or stipulated penalties due thereon under Section VI (Failure to Comply with Consent Judgment). These covenants not to sue regarding each Settling Defendant are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by that Settling Defendant and the financial, insurance, and indemnity certification made by that Settling Defendant in Paragraph 33. If the Financial Information or the Insurance Information provided by a Settling Defendant, or the financial, insurance, or indemnity certification made by a Settling Defendant in Paragraph 33, is subsequently determined by EPA to be false or, in any material respect, inaccurate, that Settling Defendant shall forfeit all payments made pursuant to this Consent Judgment and these covenants not to sue and the contribution protection in Paragraph 22 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from that Settling Defendant's false or materially inaccurate information. These covenants not to sue extends only to Settling Defendants and do not extend to any other person.

VIII. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Judgment is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenants Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Judgment, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this

Consent Judgment;

- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based on the ownership or operation of the Site by a Settling Defendant when such ownership or operation commences after signature of this Consent Judgment by the Settling Defendant;
- e. liability based on a Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Site, after signature of this Consent Judgment by the Settling Defendant; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substances outside of the Site.

16. Notwithstanding any other provision of this Consent Judgment, the United States reserves, and this Consent Judgment is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Judgment, if the Financial Information or the Insurance Information provided by a Settling Defendant, or the financial, insurance, or indemnity certification made by a Settling Defendant in Paragraph 33, is false or, in any material respect, inaccurate.

IX. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Judgment, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; or
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

18. Except as provided in Paragraph 20 (claims against other PRPs) and Paragraph 24 (*Res Judicata* and other Defenses), these covenants not to sue shall not apply in the event the

United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section VIII (Reservations of Rights by United States), other than in Paragraph 15.a. (claims for failure to meet a requirement of the Settlement Agreement) or 15.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

19. Nothing in this Consent Judgment shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site, with the exception of claims for breach of contract unrelated to environmental liability under the Master Leases. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendants.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

21. Except as provided in Paragraph 20 (claims against other PRPs), nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Judgment. Except as provided in Paragraph 20 (claims against other PRPs), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this Consent Judgment diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA.

22. The Parties agree, and by entering this Consent Judgment this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Judgment. The "matters addressed" in this Consent Judgment are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section VIII (Reservations of Rights by United

States), other than in Paragraphs 15.a. (claims for failure to meet a requirement of the Judgment) or 15.b. (criminal liability), the "matters addressed" in this Consent Judgment will no longer include those response costs or response actions that are within the scope of the exercised reservation.

23. Settling Defendants shall, with respect to any suit or claim brought by it for matters related to this Consent Judgment, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also shall, with respect to any suit or claim brought against it for matters related to this Consent Judgment, notify EPA and DOJ in writing within ten days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within ten days of service or receipt of any Motion for Summary Judgment, and within ten days of receipt of any order from a court setting a case for trial, for matters related to this Consent Judgment.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by United States set forth in Section VII.

XI. NOTICE TO SUCCESSORS-IN-TITLE AND NOTICE OF TRANSFER OF PROPERTY

25. Wiesner Estate shall, within 15 days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the Property and provides notice to all successors-in-title that the Property is part of the Site, that EPA has selected a response action for the Site, and that a potentially responsible party has entered into a Consent Judgment requiring implementation of Institutional Controls as part of a response action at the Site. The notice shall describe the land use restrictions and access rights set forth in Section XII. Such notice shall identify the U.S. District Court in which the Consent Judgment was filed, the name and civil action number of this case, and the date the Consent Judgment was entered by the Court. Wiesner Estate shall record the notice within ten days of EPA's approval of the notice. Wiesner Estate shall provide EPA with a certified copy of the recorded notice within ten days of recording such notice.

26. Wiesner Estate shall, at least 60 days prior to any Transfer of the Property, whether to Sabet or to another party, give written notice: (a) to the transferee regarding the Consent Judgment and any access rights or Proprietary Controls regarding the Property and shall include such access rights and Proprietary Controls within the contract for sale pursuant to

Paragraphs 5.f. and 6.d.; and (b) to EPA regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Judgment and any Proprietary Controls.

27. Wiesner Estate may Transfer the Property only if the Contract for Sale provides for the access rights and Proprietary Controls set forth in Paragraphs 5.f. or 6.d. and such requirements are conveyed at the time of Transfer in the deed to be recorded pursuant to Paragraph 29.c. If, after a Transfer of the Property, the transferee fails to comply with the access rights or Proprietary Controls required by this Consent Judgment, Wiesner Estate shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Wiesner Estate in obtaining compliance with the agreement. Wiesner Estate shall reimburse the United States for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

28. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Wiesner Estate shall continue to comply with its obligations under the Consent Judgment, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Proprietary Controls, and to abide by such Proprietary Controls.

XII. ACCESS AND INSTITUTIONAL CONTROLS

29. Wiesner Estate shall:

a. commencing on the date of lodging of the Consent Judgment, provide the United States and the State as well as their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity relating to response action at the Site, including, but not limited to, the following activities:

- i. monitoring, investigation, removal, remedial or other activities at the Site;
- ii. verifying any data or information submitted to the United States;
- iii. conducting investigations regarding contamination at or near the Site;
- iv. obtaining samples;
- v. assessing the need for, planning, or implementing response actions at or near the Site;
- vi. inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or its agents;
- vii. assessing compliance by Settling Defendants;

- viii. determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Judgment; and
 - ix. implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.
- b. commencing on the date of lodging of the Consent Judgment, not use the Site or the Property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site.
- c. Wiesner Estate shall provide that purchaser:
- (1) Execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Judgment or other activity including, but not limited to, those activities listed in Paragraph 29.a., and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 29.b., including, but not limited to, the specific restrictions listed therein, as further specified in Paragraph 29.c.(2)-(4).
 - (2) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) any potentially responsible parties, and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA is a third-party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property.
 - (3) Within 30 days of the Effective Date, submit to EPA for review and approval regarding the Property: (i) a draft Proprietary Control, in substantially the form attached hereto as Appendix B, that is enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendants is unable to obtain release or subordination of such prior liens or encumbrances).
 - (4) Within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Control with the appropriate land records office. Within 30 days of recording the Proprietary Control, Settling Defendants shall provide EPA with

a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

30. For purposes of Paragraph 29, "best efforts" includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If, within 60 days of EPA's request for Proprietary Controls, Settling Defendants have not obtained, pursuant to Paragraph 29.c.(1), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 29. The United States may, as it deems appropriate, assist Settling Defendants in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States for all costs incurred, direct or indirect, by the United States in obtaining such release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

31. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at the Site, Settling Defendants shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

32. Notwithstanding any provision of the Consent Judgment, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. CERTIFICATION

33. Settling Defendants certify that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendants' financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of

RCRA, 42 U.S.C. § 6927;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendants executes this Consent Judgment; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Judgment, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing, except that the two individuals associated with the Superintendent/NYLB, identified below, shall receive notice limited to Paragraph 7, above; and the final transfer of Property identified in Paragraphs 5.b. and 6.i., above. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Judgment with respect to the United States, EPA, DOJ, Settling Defendants, and Superintendent, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ No. 90-11-3-08416

and

Robert B. Kambic
Assistant United States Attorney
United States Attorney's Office
Eastern District of New York
610 Federal Plaza
Central Islip, NY 11722
USAO No. 2004V02398

and

Argie Cirillo
Assistant Regional Counsel
U.S. EPA Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

and

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Richard Rice Cincinnati Finance Center
Cincinnati, Ohio 45268
Attention: Richard Rice FINANCE MS: NWD
E-MAIL: AcctsReceivable.CINWD@epa.gov

As to Wiesner Estate:

Joseph T. Gibbons, Esq.
DeCicco, Gibbons & McNamara, P.C.
14 East 38th Street
New York, NY 10016

and

Jason Feinstein, Executor
Estate of Lillian Wiesner
Sterns & Weinroth
50 West State Street
Suite 1400
P.O. Box 1298
Trenton, New Jersey 08607-1298

As to John P. Maffei:

Michael J. Carro, Esq.
London Fischer LLP
59 Maiden Lane
New York, New York 10038

and

John P. Maffei
85-26 Edgerton Blvd.
Jamaica Estates, New York 11432

As to Superintendent/NYLB:

Superintendent of Financial Services
New York Liquidation Bureau
100 Williams Street
New York, NY 10038-3901
Claim No.: 70518646

and

Beth L. Rogoff, Esq.
Kardisch, Link & Associates, P.C.
One Old Country Rd., Suite 347
Carle Place, New York 11514
File No.: 2810

XV. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Judgment.

XVI. INTEGRATION/APPENDICES

36. This Consent Judgment and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Judgment. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Judgment. The following appendices are attached to and incorporated into this Consent Judgment:

"Appendix A" is a list of the financial documents submitted to EPA by Settling Defendants.

"Appendix B" is the Draft Proprietary Control

"Appendix C" is the Agreement and Stipulation

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Judgment shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations which indicate that this Consent Judgment is inappropriate, improper, or inadequate. Settling Defendants consents to the entry of this Consent Judgment without further notice.

38. If for any reason this Court should decline to approve this Consent Judgment in the form presented, this Consent Judgment is voidable at the sole discretion of any party and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

39. Each undersigned representative of Settling Defendants to this Consent Judgment and the Deputy Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment and to execute and bind legally such party to this document.

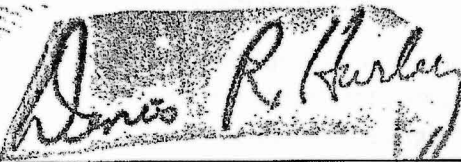
40. Settling Defendants agree not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Consent Judgment, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Judgment.

41. Settling Defendants designate the persons identified in Paragraph 34 as the agents who are authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Judgment. Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

42. Upon entry of this Consent Judgment by the Court, this Consent Judgment shall constitute the final judgment between and among the United States and Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ²⁶ DAY OF September, 2012.

A handwritten signature in dark ink, appearing to read "Denis R. Hurley", is written over a rectangular stamp area.

HONORABLE DENIS R. HURLEY
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

FOR THE UNITED STATES OF AMERICA:

August 17, 2012

Date

/s/ Ellen M. Mahan

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

August 17, 2012

Date

/s/ Robert B. Kambic

By: ROBERT B. KAMBIC
Assistant United States Attorney
United States Attorney's Office
Eastern District of New York
610 Federal Plaza, 5th Floor
Central Islip, NY 11722

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

August 17, 2012
Date

/s/ Walter Mugdan
WALTER MUGDAN
Director, Emergency and Remedial Response
Division, Region II
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

FOR ESTATE OF LILLIAN WIESNER:

August 7, 2012
Date

/s/ Jason Feinstein
JASON FEINSTEIN, Executor
Estate of Lillian Wiesner
Sterns & Weinroth
50 West State Street
Suite 1400
P.O. Box 1298
Trenton, New Jersey 08607-1298

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

FOR JOHN P. MAFFEI:

August 7, 2012
Date

/s/ John Maffei
JOHN P. MAFFEI
85-26 Edgerton Blvd.
Jamaica Estates, New York 11432

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

FOR EXECUTEAM CORP:

August 7, 2012

Date

/s/ John Maffei

JOHN P. MAFFEI

85-26 Edgerton Blvd.

Jamaica Estates, New York 11432

THE UNDERSIGNED PARTIES enter into this Consent Judgment in the matter of the United States v. Estate of Lillian Wiesner, et. al., No. CV 05-1634, relating to the Stanton Cleaners Area Groundwater Superfund Site.

**SUPERINTENDENT OF FINANCIAL
SERVICES OF THE STATE OF NEW YORK, AS
ANCILLARY RECEIVER OF THE HOME
INSURANCE COMPANY**

August 17, 2012
Date

/s/ Jonathan L. Bing
JONATHAN L. BING
Special Deputy Superintendent and Agent

Appendix A: List of financial documents submitted to EPA by Settling Defendants

- Individual Ability to Pay Claim, Financial Data Request Form for John Maffei, June 26, 2006.
- U.S. Individual Income Tax Returns, Form 1040, for John Maffei for the years ended December 31, 2001-2005.
- U.S. Individual Income Tax Returns, Form 1040, for John Maffei for the years ended December 31, 2008-2011.
- Individual Ability to Pay Claim, Financial Data Request Form for Wiesner Estates November 26, 2002.
- Response of Wiesner Estate to U.S. EPA Request for Financial Information, dated November 26, 2002.
- Response of Wiesner Estate to U.S. EPA Request for Financial Information, dated February 15, 2007.
- Response of Wiesner Estate to U.S. EPA Request for Financial Information, dated July 2, 2012.

County:

Site No:

Order No:

**DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL
EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement is made this ____ day of _____, 20____, by and between _____, a [municipal] corporation, having an address at _____, New York ("Grantor"), and the People of the State of New York, acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in _____, County of _____, State of New York, more particularly described on Exhibit A attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the _____ Superfund Site ("Site"), the location of a former _____ facility which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on _____; and

WHEREAS, in a Record of Decision dated _____ ("ROD") as modified by an Explanation of Significant Difference dated _____ ("ESDs"), EPA Region 2 selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a response action for the Site, which provided, in part, for the following actions:

[INSERT SITE SPECIFIC USE RESTRICTIONS FOR SITES WHERE A SITE MANAGEMENT PLAN IS AVAILABLE AND ADD THE FOLLOWING LANGUAGE
".....In accordance with an EPA and NYSDEC-approved Site Management Plan (SMP). A copy of the SMP must be obtained by any party with an interest in the property. The SMP may be obtained from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at derweb@gw.dec.state.ny.us.]

[FOR SITES WHERE NO SMP IS AVAILABLE, GPS CO-ORDINATES, METES AND BOUNDS DESCRIPTION AND/OR SURVEY CAN BE USED TO DEPICT THE LOCATION OF THE CONTROLS AND /OR PORTIONS OF A SITE THAT HAVE RESTRICTIONS IN PLACE OR IF THE CONTROLS COVER THE ENTIRE SITE, THEN METES AND BOUNDS AND/ OR SURVEY OF ENTIRE SITE IS SUFFICIENT, ORIGINAL SURVEYS ARE ATTACHED TO THE SMP]

County:

Site No:

Order No:

(See example below)

- (i) *restricting future development/use of the Site where consolidated material has been placed as shown on Exhibit B, (ii) prohibiting excavation below the site-wide soil cover (including the restricted area noted above) unless the activities are in accordance with an EPA (with NYSDEC concurrence)-approved Site Management Plan, and (iii) restricting the use of groundwater in the semi-confining unit as a source of potable or process water unless groundwater quality standards have been met.*

WHEREAS, the construction activities associated with the remedial action have been completed at the Site and long term monitoring activities are ongoing; and

WHEREAS, the parties hereto have agreed that pursuant to the terms of Administrative Order on Consent, Index No. _____, dated _____, as amended on _____, ("Administrative Order") that Grantor shall grant to the Grantee a permanent Declaration of Covenants, Restrictions and Environmental Easement, including but not limited to a) providing a right of access over the Property for purposes of implementing, facilitating and monitoring the response action; and b) to impose on the Property, restrictions that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wish to cooperate fully with the Grantee in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Site shall be subject to this Declaration of Covenants, Restrictions and Environmental Easement, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Site.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions: The following restrictions apply to the use of the Property, run with the land and are binding on the Grantor and its successors in title and assigns:

[INSERT SITE SPECIFIC USE RESTRICTIONS]

(See example below)

County:

Site No:

Order No:

(i) there shall be no future development or use of the Site where consolidated material has been placed¹ nor shall excavation below the Site-Wide Soil Cover as set forth in Exhibit B² be permitted unless, in each such instances, the activities are in accordance with an EPA (with NYSDEC concurrence)-approved Site Management Plan; and (ii) there shall be no use of the groundwater from the semi-confining unit underlying the Property as a source of potable or process water unless such groundwater meets quality standards established under federal and state laws and regulations for the intended use.

4. Modification or termination of restrictions and covenants: The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
5. Right of access: Grantors hereby convey to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor, their successors and /or assigns, and on any tenants or any other parties having an interest and/or rights to the Property:
 - a) Implementing the response actions in the ROD as modified by the ESDs.;
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - e) Implementing additional or new response actions under CERCLA.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

¹ See Exhibit B for an as-built survey of the Property which depicts the restricted area as "Restricted Use Area (Consolidation Area)" and with GPS coordinates of corners also shown on survey metes and bounds description of restricted area.

² See Exhibit B for Site-Wide Soil Cover Area also shown with metes and bounds description of restricted area.

County:

Site No:

Order No:

8. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
9. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
10. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _____, 20__, RECORDED IN THE _____ COUNTY CLERK'S OFFICE ON _____, 20__, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
12. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
13. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
14. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Property is free and clear of encumbrances.
15. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

County:

Site No:

Order No:

To Grantor:

To Grantee:

Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5500

NYS Department of Environmental Conservation
Division of Environmental Remediation
Site Control
625 Broadway
Albany, New York 12233

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency & Remedial Response Division
Western New York Remediation Branch
Attention: _____ Site Remedial Project Manager
290 Broadway, 20th Floor,
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: _____ Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

16. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall, with respect to the Environmental Easement, be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

County:

Site No:

Order No:

- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- e) Joint obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
- f) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.
- g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this _____ day of _____, 201_.

GRANTOR:

County:

Site No:

Order No:

By: _____

Title: _____

Grantor's Acknowledgment

[illegible]

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as _____ of the _____, and that by his signature on the instrument, the Grantor _____, upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

County:

Site No:

Order No:

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

By: _____
Dale A. Desnoyers, Director
Division of Environmental Remediation

Date: _____

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 20____, before me, the undersigned, personally appeared Dale A. Desnoyers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

County:

Site No:

Order No:

EXHIBIT A

To

**DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL
EASEMENT PROPERTY
XXXXXXXXX Site**

County:

Site No:

Order No:

EXHIBIT B
To
DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL
EASEMENT

Description of Portions of Property with Use Restrictions
XXXXXXXX Site

(See attached as-built survey of Property depicting restricted-use areas)

APPENDIX C

APPENDIX C

Claim Number: 70518646

Stipulation of Settlement

Index Number: 6933/06

In the matter of the Superintendent as
the Ancillary Receiver of Home Insurance Company

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

HOWARD MILLS, Acting Superintendent of Insurance of the Plaintiff
State of New York as Ancillary Receiver of THE HOME
INSURANCE COMPANY,

vs..

The Estate of LILLIAN WIESNER, by Executor JASON Defendants
FEINSTEIN, ESQ., JOHN MAFFEI and EXECUTEAM
CORP.,

IT IS HEREBY STIPULATED AND AGREED by and between Anderson Kill & Olick, P.C., attorneys for the Defendants, Estate of Lillian Wiesner by Executor Jason Feinstein, Esq., John Maffei, Executeam Corp., Kardisch, Link & Associates, P.C., attorneys for the Plaintiff, and the Superintendent as Ancillary Receiver of Home Insurance Company that,

WHEREAS, the Defendant's insurer, Home Insurance Company has been found insolvent and a receivership proceeding has been commenced pursuant to Article 74 of the New York Insurance Law;

WHEREAS, the Property/Casualty Insurance Security Fund and the Public Motor Vehicle Liability Security Fund are maintained pursuant to Article 76 of the Insurance Law to pay certain claims that are allowed in Article 74 proceedings, and the Workers' Compensation Security Fund pursuant to Article 6-A is available to pay certain claims of an insolvent carrier pursuant to Article 76 of the Insurance Law.

NOW THEREFORE, the action captioned United States of America vs. Estate of Lillian Wiesner, John Maffei and 0.25 Acres of Land, More or Less, Located at 110 Cutter Mill Road, Great Neck, bearing Index Number CV-05 1634 in the United States District Court for the Eastern District of New York (hereinafter "the U.S. action"), is settled on the following terms:

IT IS STIPULATED AND AGREED, that the settlement amount in the U.S. action is the sum of Six Hundred and Six Thousand dollars (\$606,000.00) (the "Settlement Amount"), is to be recommended for allowance pursuant to Articles 74 and 76 of the New York Insurance Law, by petition of the Superintendent of Financial Services as

Ancillary Receiver in the liquidation of Home Insurance Company and will be paid to United States Environmental Protection Agency in accordance with the Consent Judgment entered therein.

IT IS FURTHER STIPULATED AND AGREED, that payment of the above stated Settlement Amount, shall be made pursuant to New York Insurance Law Articles 74 and 76; and

IT IS FURTHER STIPULATED AND AGREED, that the Defendants understand and accept that the Settlement Amount is subject to the approval of the court supervising the receivership proceeding; and

IT IS FURTHER STIPULATED AND AGREED, that the Defendants understand and accept that there may be significant delay in payment of the Settlement Amount and the Defendants will not seek to vacate the settlement in either this action or in the U.S. action based on such delay; and

IT IS FURTHER STIPULATED AND AGREED, that the attorney(s) for the defendants will provide any and all documents required by the New York Liquidation Bureau to process the claim for allowance; and

IT IS FURTHER STIPULATED AND AGREED, that The Home is not obligated to defend or indemnify the defendants for any action brought by the United States for the Defendants individual or collective failure to comply with and/or breach of the Consent Judgment in the U.S. action; and

IT IS FURTHER STIPULATED AND AGREED, by and on behalf of the Defendants in this action, in consideration of the settlement of the U.S. action, that Defendants and counsel for Defendants have performed a diligent search of their files, and have disclosed all liens in connection with this matter and the property commonly known as 110 Cutter Mill Road, Great Neck, New York. Furthermore, Defendants and counsel for Defendants have not received notice of any liens that have been asserted against the proceeds of the settlement in the U.S. action, other than as previously disclosed. Moreover, Defendants and counsel for Defendants will defend, indemnify and hold harmless, The Home Insurance Company and the Superintendent of Insurance as ancillary receiver of The Home Insurance Company, the New York Liquidation Bureau and counsel for Plaintiffs against any lien, claim or action arising from the settlement or asserted against the settlement proceeds in the U.S. action, including any lien that Defendants and/or counsel for Defendants represent to pay themselves; and

IT IS FURTHER STIPULATED AND AGREED, that the settlement in this action will not be reduced to a judgment, and that Defendants will neither enter nor enforce any judgment against the plaintiff arising out of the underlying occurrence; and

IT IS FURTHER STIPULATED AND AGREED, that this settlement agreement is subject to CPLR §5003-a(f).

Date: August 14, 2012
New York, New York

/s/ Jason Feinstein

Defendant Estate of Lillian Wiesner, by
Executor Jason Feinstein, Esq.

/s/ John Maffei

Defendant John Maffei

/s/ John Maffei

Defendant Executeam Corp. by John Maffei

/s/ John G. Nevius

Attorney(s) for Defendant(s)
John G. Nevius, Esq.
Anderson Kill & Olick, P.C.

/s/ Jack Franceschetti

New York Liquidation Bureau
Jack Franceschetti, Esq

/s/ Beth L. Rogoff

Attorney(s) for Plaintiff
Beth L. Rogoff, Esq.
Kardisch Link & Associates, P.C.

